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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE APPLE INC. SECURITIES
LITIGATION

CASE NO. C-06-05208-JF

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
MICHAEL J. BARRY IN SUPPORT OF
FINAL APPROVAL OF SETTLEMENT AND
PLAN OF ALLOCATION AND MOTION FOR
AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

1 I, MICHAEL J. BARRY, hereby declare as follows:

2 1. I am a director of Grant & Eisenhofer P.A. (“G&E”), counsel to the New York City
3 Employees’ Retirement System (“NYCERS” or “Lead Plaintiff”), and the Court-appointed Lead
4 Counsel for the Class in the above-captioned action (the “Action”). I have personal knowledge of the
5 matters set forth below based on my active participation in all aspects of the prosecution and settlement
6 of this Action. I submit this Supplemental Declaration in further support of Lead Plaintiff’s Motion for
7 Final Approval of Settlement and Plan of Allocation and Motion for an Award of Attorneys’ Fees and
8 Reimbursement of Expenses (“Lead Plaintiff’s Motion for Final Approval”), and in response to an
9 objection that was received subsequent to the February 25, 2011 hearing.

10 2. On February 25, 2011, the Court conducted a settlement fairness hearing to consider
11 Lead Plaintiff’s Motion for Final Approval. At the conclusion of the fairness hearing, the Court
12 requested that the parties submit an update on the status of the claims process. This update is set forth
13 below.

14 3. Attached hereto as Exhibit 1 is the Third Supplemental Declaration of the Claims
15 Administrator, with exhibits (the “Third Supp. Oseas Decl.”).

16 4. According to the Third Supplemental Oseas Declaration, as of March 14, 2011, the
17 Claims Administrator has received 76,820 Proofs of Claim. The Claims Administrator has estimated the
18 Recognized Claims for 64,684 of these 76,820 Proofs of Claim according to the Plan of Allocation. Of
19 the 64,684 Proofs of Claim, the Claims Administrator’s calculations show that 18,425 Proofs of Claim
20 have a Recognized Claim greater than \$5.00 and represent \$48,180,424.75 in value of Recognized
21 Claims, far exceeding the \$16.5 million Settlement Fund.

22 5. Because the Recognized Claims greatly exceed the Settlement Fund, it appears that the
23 purported “contingent” objections of objector Patrick Pezzati have been rendered moot and should be
24 overruled. *See* Pezzati Objection, Dkt. No. 148 at 2 (“if...the \$16.5 million settlement fund will be
25 exhausted, [Pezzati] has no objection to the settlement or the fee request.”).

26 6. In addition to those objections of which the Court already has been apprised, on March 3,
27 2011, Lead Counsel received an objection from a Mr. Geoffrey Wood, and individual who purports to
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1 have been a shareholder of Apple during the Class Period. (Mr. Wood's objection is attached as
 2 Attachment D to the Third Supp. Oseas Decl.). Mr. Wood's objection should be overruled. First, not
 3 only is Mr. Wood's objection untimely, but Mr. Wood did not provide any evidence that he is, in fact, a
 4 member of the Class. The Notice requires that individuals wishing to object must "identify the date(s),
 5 price(s), and number of shares of all purchases and sales of Apple common stock [] made during the
 6 Class Period." Notice ¶ 36. Mr. Wood's objection makes no showing that he suffered losses during the
 7 Class Period and therefore, he lacks standing. *See Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326,
 8 333 (1980); *see also San Francisco NAACP v. San Francisco Unified School Dist.*, 59 F. Supp. 2d 1021,
 9 1032 (N.D. Cal. 1999) ("nonclass members have no standing to object to the settlement of a class
 10 action") (citing *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989) ("The plain language of Rule
 11 23(e) clearly contemplates allowing only class members to object to settlement proposals.")).

12 7. Second, in terms of substance, Mr. Wood's objection fails for being comprised of no
 13 more than general complaints about the inadequacy of the recovery. Mr. Wood offers no substantive
 14 objection and fails to address the issues raised Lead Plaintiff's Motion for Final Approval. Indeed,
 15 beyond complaining—albeit at length—about the amount of the recovery, he says nothing. Yet even in
 16 cases in which objectors have made specific, reasoned allegations that the amount of recovery is
 17 inadequate, courts have overruled such objections. *See, e.g., In re Tyco Intern., Ltd. Multidistrict Litig.*
 18 535 F. Supp. 2d 249, 263 (D.N.H. 2007).

19 8. Theodore Frank, counsel for Mr. Pezzati, has indicated that he intends to seek an award
 20 of fees to be paid out of any fee award to counsel for Lead Plaintiff, and intends to seek this fee
 21 sometime in May 2011—well after this Court has given Final Approval to the Settlement in this case.
 22 As explained in Lead Plaintiff's Reply in Support of Motion for Final Approval of Class Action
 23 Settlement and Plan of Allocation and Application for Attorneys' Fees and Reimbursement of Expenses
 24 (Dkt. No. 153), such a petition should, if entertained at all, be directed to defendant Apple Inc. because
 25 the attorneys' fees cannot be paid from the fees awarded to Plaintiffs' counsel. *See, e.g., Dkt. No. 153 at*
 26 11-2, citing *Fleury v. Richemont North Am., Inc.*, No. 05-4525 EMC, 2008 WL 4829868 (N.D. Cal.
 27 Nov. 4, 2008).

1 9. Lead Counsel is applying for an award of fees for the benefit that it provided in
2 connection with the litigation. To the extent that Mr. Frank claims to have provided a benefit—even
3 though he objected to preliminary approval of the settlement and his “contingent” objections to final
4 approval of the settlement have been rendered moot for the very reasons Lead Plaintiff previously
5 articulated that his objections were meritless —Lead Plaintiff has no objection to Mr. Frank making an
6 application for payment of fees directly from Apple, just as Lead Plaintiff has done. Indeed, because
7 Lead Plaintiff and counsel for Plaintiffs Vogel and Mahoney sought (and obtained) preliminary approval
8 to ask for an award of fees of up to \$2 million, but have in fact applied only for an award of fees in the
9 amount of \$1,966,250.00, Lead Counsel has no objection to Mr. Frank seeking payment of the
10 difference if he can establish, like counsel for Lead Plaintiff, that his conduct produced a common
11 benefit for the Class. In order to do so, however, he would need to make his application *before* the
12 Court grants Final Approval to the Settlement and issues an Order releasing Apple from future liability.

13 10. Based on the foregoing, and for the reasons previously articulated in Lead Plaintiff’s
14 Notice of Motion and Motion for Final Approval of Class Action Settlement; Memorandum of Points
15 and Authorities In Support Thereof (Dkt. No. 142); Lead Plaintiff’s Notice of Motion and Motion for
16 Attorneys’ Fees and Reimbursement of Litigation Expenses; Memorandum of Points and Authorities In
17 Support Thereof (Dkt. No. 143); Declaration of Michael J. Barry In Support of Motion for Final
18 Approval of Settlement and Plan of Allocation and Motion for an Award of Attorneys’ Fees and
19 Reimbursement of Expenses (Dkt. No. 144); and Lead Plaintiff’s Reply in Support of Motion for Final
20 Approval of Class Action Settlement and Plan of Allocation and Application for Attorneys’ Fees and
21 Reimbursement of Expenses (Dkt. No. 153), and subject to any final consideration of any application for
22 attorneys’ fees that counsel for objector Mr. Pezzati may determine to make, Lead Plaintiff respectfully
23 submits that the proposed plan of allocation is fair, reasonable, and in the best interests of the class, that
24 all objections to the Plan and to the Settlement and Plaintiffs’ Counsel’s request for attorneys’ fees
25 should be overruled.

26 11. Accordingly, Lead Plaintiff respectfully requests that the Court grant final approval to the
27 Settlement, resolving all claims for attorneys’ fees in total, regardless of whether they are made against
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Apple or against Lead Counsel, by or on behalf of any person or entity, for any reasons whatsoever, relating to the Settlement, the prosecution of the Litigation, or the underlying claims.

12. To the extent the Court would like to address these issues at a hearing, Lead Counsel is available to do so at the Court's convenience.

Dated: March 15, 2011

Respectfully submitted,

GRANT & EISENHOFER P.A.

/s/ Michael J. Barry

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